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Attorneys for USACM Liquidating Trust

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA**

In re:

USA COMMERCIAL MORTGAGE  
COMPANY,

Debtor.

Case No. BK-S-06-10725-LBR

Chapter 11

Jointly Administered Under Case No.  
BK-S-06-10725 LBR

**DECLARATION OF GEOFFREY L.  
BERMAN IN SUPPORT OF  
OMNIBUS OBJECTIONS OF  
USACM TRUST TO PROOFS OF  
CLAIM BASED UPON  
INVESTMENT IN THE PLACER I  
LOAN**

Date of Hearing: July 26, 2011  
Time of Hearing: 1:30 p.m.  
Estimated Time for Hearing: 10 minutes

Geoffrey L. Berman declares under penalty of perjury:

1. I am an adult person competent to testify in court.
2. I make this declaration based upon my personal knowledge, and upon the records USA Commercial Mortgage Company.
3. I am the Trustee of the USACM Liquidating Trust ("USACM Trust"), which is an entity created by the Debtors' Third Amended Joint Chapter 11 Plan of Reorganization ("Plan"), in the jointly-administered bankruptcy cases, In re USA

Commercial Mortgage Company, BK-S-06-10725-LBR, pending in the United States Bankruptcy Court for the District of Nevada.

4. Around November 2004, USACM circulated an Offer Sheet to prospective Direct Lenders soliciting funding for an acquisition and development loan to a borrower identified as “USA Investment Partners, LLC or assignee.” A copy of the Offer Sheet is attached hereto as **Exhibit B** and incorporated by this reference. The total loan amount proposed was ultimately \$31,500,000. The loan proceeds were to be used by Borrower to acquire two non-contiguous parcels of property for the development of a community in an area approximately twenty miles northeast of Sacramento, in Placer County, California, all within a larger specific plan that encompassed five thousand acres, and would ultimately include dwelling units, commercial and business parks, schools, parks, and open space. The Offer Sheet described the investment as a “First Trust Deed Investment” and noted that the investment would be secured by a first deed of trust on approximately 338 acres of land.

5. The Offer Sheet indicated that the loan would be repaid after the Borrower sold the entire property to one or more merchant builders, upon approval of the site’s specific plan. The Offer Sheet also indicated that the loan to value ratio would be approximately 50% upon completion of the specific plan. Based upon a December 21, 2004 appraisal from Seevers Jordan Ziegenmeyer, as of December 3, 2004, the property securing the Placer I Loan had an approximate value of \$33,830,000 and a “hypothetical prospective market value upon final approval of Placer Vineyard Specific Plan” of \$67,660,000. Thus, the loan to value figure provided in the Offer Sheet appears to be supported by a contemporaneous appraisal.

6. On December 10, 2004, Borrower made and delivered to various lenders, including the Direct Lenders identified in **Exhibit A**, a “Promissory Note Secured by Deed of Trust” (the “Note”) and a Loan Agreement. The Note and Loan Agreement provided

for a loan in the initial principal amount of \$27,500,000, however, the Loan Agreement provided for an increase in the loan amount up to \$31,500,000, which is what was ultimately lent to the Borrower, pursuant to subsequent amendments to the Loan Agreement and the Note. The loan was intended to be used to acquire the subject property and pay for certain pre-development costs. The Note was secured by a document entitled “Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing” (the “Deed of Trust”), that was recorded in the official records of Placer County, California on December 20, 2004. The Deed of Trust was the senior lien on the real property (the “Property”). Later loan advances were secured by amendments to the Deed of Trust likewise recorded in Placer County.

7. The Offer Sheet indicates that the loan will be guaranteed by the principals of USA Investment Partners, Tom Hantges and Joe Milanowski, and states that they have a combined worth of approximately \$97 million as of June 30, 2004. Hantges and Milanowski executed personal guarantees and claims were made in their respective bankruptcy cases.

8. Pursuant to its terms, the Note was scheduled to mature eighteen months after the Deed of Trust was recorded, in May 2006. By then, USACM was a debtor in possession in a chapter 11 bankruptcy. By letters dated November 30, 2006, USACM informed Hantges and Milanowski that the loan was in default and they were therefore in default of their guarantees.

9. The loan was secured by a Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing recorded on December 20, 2004 as Document No. 2004-0169766, with the Placer County Recorder, State of California, with respect to the Placer Vineyards 1st Position Loan (original principal balance: \$27,500,000), the Sixth Amendment to Deed of Trust recorded on November 23, 2005, as Document No. 2005-0158127, with the Placer County Recorder, evidencing the increase in the principal

1 balance of the Placer Vineyards 1st Position Loan to \$31,500,000. The Placer II Loan was  
2 secured by the Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing  
3 (Second Position) recorded on December 20, 2004 as Document No. 2004-0169767, with  
4 the Placer County Recorder, State of California, with respect to the Placer Vineyards 2nd  
5 Position Loan (principal balance: \$6,500,000).

6 10. According to the USACM July 31, 2006 "Loan Summary" the Loan was  
7 nonperforming, and USACM records indicate that the Loan Outstanding Balance at  
8 2/28/07 for the Placer Vineyards 1st Position Loan (Placer I) was \$31,500,000, with  
9 \$5,602,920 in Interest Outstanding at 2/28/07, and \$1,228,292 in Interest Prepaid to  
10 Investors, and also indicates that the Loan Outstanding Balance at 2/28/07 for the Placer  
11 Vineyards 2nd Position Loan (Placer II) was \$6,500,000, with \$1,435,656 in Interest  
12 Outstanding at 2/28/07, and \$259,999 in Interest Prepaid to Investors.

13 11. Pursuant to the confirmed plan of reorganization, the USACM Trust  
14 assumed the obligation to service the Placer I Loan. After USACM sought authority to  
15 assign the servicing rights to Compass,<sup>1</sup> the motion was withdrawn.<sup>2</sup>

16 12. On April 27, 2007, the USACM Trust made demand on the Borrower for  
17 payment of the Placer I and II Loans. The Borrower did not make any payments. On May  
18 10, 2007, the USACM Trust made demand on the guarantors - Joseph Milanowski and  
19 Thomas Hantges, who did not make any payments. The USACM Trust reported monthly  
20 to the Lenders<sup>3</sup> on the status of loan collection efforts and the need for a servicer advance  
21 to pay unpaid real estate taxes.

22  
23  
24 <sup>1</sup> Motion to Sell Under Section 363 All Commercial Mortgage Assets of Debtor USA Commercial  
Mortgage Company In The Placer Vineyards Loans to Compass USA SPE, LLC [DE 3037].

25 <sup>2</sup> Notice of Withdrawal of: Motion to Sell Under Section 363 All Commercial Mortgage Assets  
26 of Debtor USA Commercial Mortgage Company in the Placer Vineyards Loans [DE 3424].

<sup>3</sup> <http://usacmcucc.bmcgroup.com/Placer%20County/Forms/AllItems.aspx>.

1           13.     In June 2007, after consultation with and with the consent of the Lenders, the  
2     USACM Trust advanced \$678,649.19 to bring the taxes current on the Property in order  
3     that the Property might be included in certain public entitlements approved by the Placer  
4     County Board of Supervisors later that month. The taxes were paid and the entitlements  
5     were obtained.

6           14.     The USACM Trust consulted with the trustee of USA Investment Partners,  
7     LLC about the possibility of a sale of the Property for market value, but less than the full  
8     payoff due on the Placer I Loan (much less the Placer II Loan). A number of Lenders  
9     opposed the proposition of a sale of the Property for less than all sums due on the Loans.  
10    Accordingly, the USACM Trust initiated a non-judicial foreclosure sale of the Property.

11          15.     As the foreclosure process was ongoing, a number of Lenders acted in  
12    concert to question the authority of the Trust to direct the foreclosure sale on behalf of the  
13    Placer I Lenders. Accordingly, on October 2, 2008, the USACM Trust filed a complaint  
14    against the Borrower and the Direct Lenders, seeking the appointment of a receiver over  
15    the Property. The matter came before the Honorable Kent Dawson, United States District  
16    Court, District of Nevada, in case number 2:08-cv-01276-KJD-RJJ On December 16,  
17    2008, Elli Mills was appointed as receiver for the Placer I Lenders (the "Receiver") and  
18    authorized to foreclose on the Property. The Receiver submits periodic reports to the  
19    Placer I Lenders and maintains a website for their information.

20          16.     After appointment of the Receiver, a foreclosure sale on the Property  
21    occurred on December 22, 2008, upon a \$8,404,030 credit bid, and the trustee's sale deed  
22    was recorded in the Records of Placer County, California. The Receiver continues to  
23    market the Property for sale. The amount of the eventual distribution to the Placer I  
24    Lenders is unknown, but the Trustee expects any distribution to be well below the value of  
25    the principal amount of the Placer I Loan.  
26

I declare under penalty of perjury that the foregoing is true and correct.

Dated: June 13, 2011

/s/Geoffrey L. Berman

Geoffrey L. Berman

Copy of the foregoing (without exhibits)

Mailed by First Class postage prepaid

U.S. Mail on June 13, 2011 to the

Investors in the Placer I Loan listed

on Exhibit A.

s/ Matt Burns

Matt Burns

Lewis and Roca LLP